
**Natural Resources, Ecology &
Parks Committee**

SSB 5449

Brief Description: Providing lien authority to the department of ecology to facilitate the recovery of remedial action costs under the model toxics control act.

Sponsors: Senate Committee on Water, Energy & Environment (originally sponsored by Senators Poulsen, Swecker, Pridemore, Kline, Fraser and Rockefeller).

Brief Summary of Substitute Bill

- Authorizes the Department of Ecology (DOE) to file a lien against a property where the state of Washington has incurred a remedial action cost that is unrecovered.
- Except for property tax assessments and mortgage liens, liens filed by the DOE have priority in rank over all other privileges, liens, encumbrances, or other security interests affecting the property.

Hearing Date: 3/22/05

Staff: Jeff Olsen (786-7157).

Background:

The state Model Toxics Control Act (MTCA) requires sites contaminated with hazardous materials to be cleaned up by liable parties. The MTCA is carried out by the Department of Ecology (DOE) to ensure that the vast majority of sites at which hazardous substances have been released are cleaned up.

The DOE's primary responsibility for hazardous waste cleanup under MTCA include: (1) investigating and prioritizing cleanup sites; (2) providing technical assistance to a potentially liable party desiring to perform cleanups; (3) setting cleanup standards for hazardous substances; and (4) requiring or undertaking cleanups where appropriate. The DOE is also granted enforcement authority, including the ability to enter property, enter into settlements, file actions or issue orders to compel cleanup, and impose civil penalties and seek recovery of state cleanup costs. The MTCA authorizes the DOE to recover costs the agency incurs in cleaning up toxic-contaminated sites from liable parties. The DOE uses recovered costs to fund cleanup of other contaminated sites. The DOE does not have authority to file a lien on property to facilitate cleanup cost recovery.

Summary of Bill:

If the state incurs remedial action costs when cleaning up real property and is unable to recover its costs from a liable party, the Department of Ecology (DOE) may file a lien against the property. Except for local and special district property tax assessments and mortgage liens, the lien has priority over all other liens or encumbrances. The amount of the lien cannot exceed the cost of the cleanup.

If the facility is abandoned or the owner has failed to comply with order by the DOE, the DOE may choose to limit the amount of the lien to the increase in the fair market value attributable to the cleanup. The increase in value, to be measured at the time the property is sold, will be determined by subtracting the county assessor's valuation for the most recent year prior to the cleanup from the sale price after the cleanup.

Unless the DOE determines that it is in the public interest to remove the lien, the lien will continue in force until the liability is satisfied through the sale of the property or other means agreed to by the DOE. The DOE's decisions regarding filing of a lien are reviewable exclusively in superior court.

Before filing a lien, the DOE must give the property owner, mortgagees, lienholders, and persons and contractors known to be conducting remedial actions at the facility notice of its intent to file a lien. The notice must specify the lien's purpose, a property description, the state's cleanup costs, probable cause that the identified property is subject to the costs, and a time period for responding with comments. The DOE must provide notice of its intent to file a lien by certified mail or if the owner is unknown provide notice in a local newspaper.

The DOE may file the lien if it receives no response or receives a response but determines that there is probable cause to file a lien. The lien is effective when filed with the auditor in the county where the property is located. A filed lien statement must include a property description and the amount of the lien.

If exigent circumstances require filing a lien prior to giving notice, or prior to expiration of the time period for comments, the DOE may file the lien immediately. Exigent circumstances include an imminent bankruptcy filing by the owner, imminent property transfer, or both.

An exemption from the lien authority is specified for real property owned by a local government or special purpose district or residential property consisting of four residential units or less, unless the property was used for illegal drug manufacturing and storage.

The owner of property subject to a DOE lien may petition the DOE to remove or reduce the lien. If the DOE denies the request, the owner may, within 90 days, file suit to remove or reduce the lien. The lien will be removed if the owner can prove by a preponderance of the evidence that they are not liable under the MTCA, and reduced if they can prove that the lien exceeds the DOE cleanup costs. A lien for increase in fair market value due to the DOE cleanup will be reduced if the lien exceeds the DOE cleanup costs or exceeds the increase in fair market value solely attributable to the DOE cleanup.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.